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The Effect of the Endangered Species Act of 1973

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The Effect of the Endangered Species Act of 1973 on the New England Scrimshaw Industry

by

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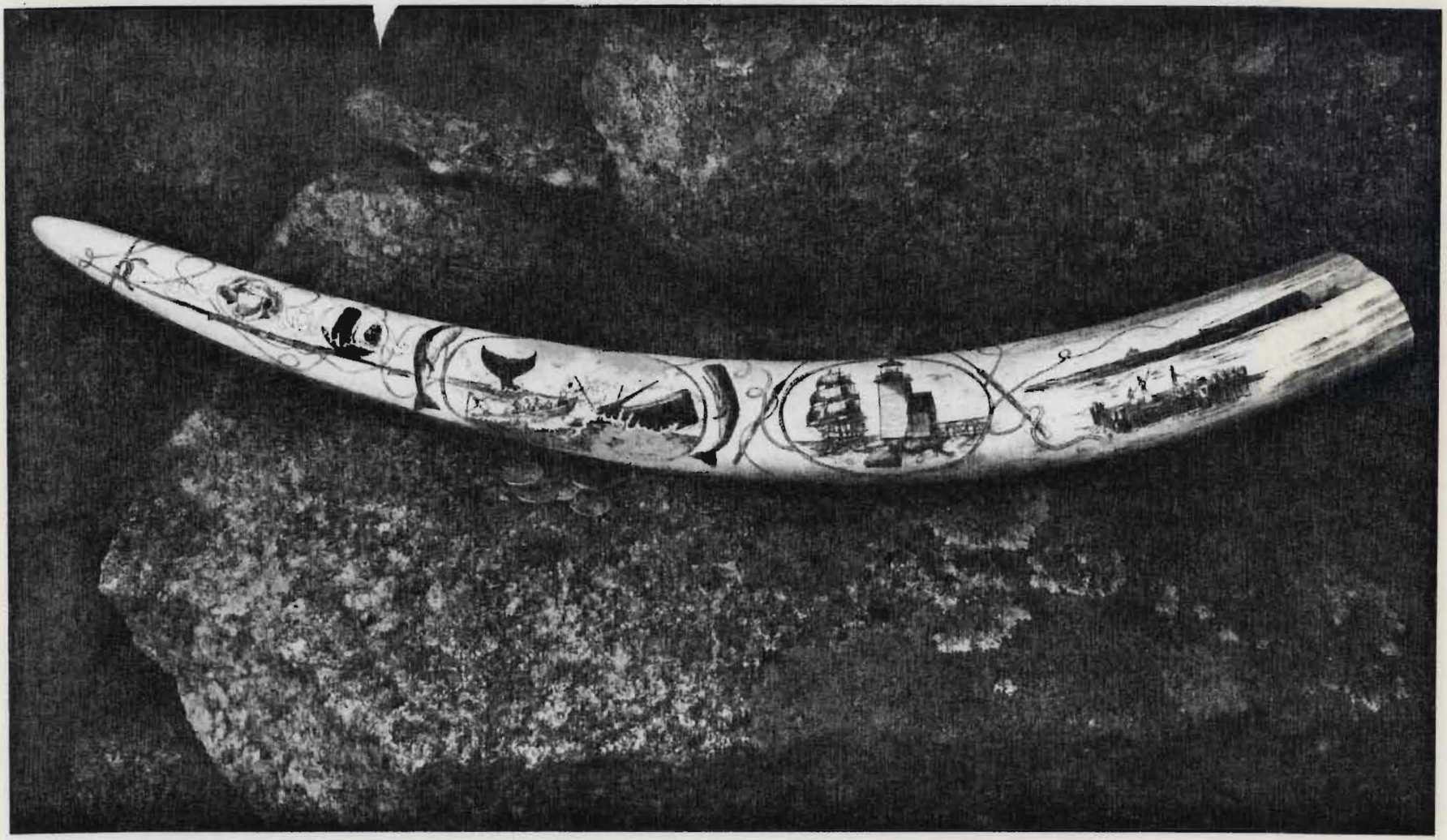
I would like to formally dedicate this work to two people whose corporate knowledge of the art of scrimshaw is only surpassed by their total and absolute willingness to share their knowledge with others. Thank-you Bob Rayno and Sheila Callaghan.



Modern scrimshaw on Walrus' Tusk. Bob Rayno, scrimshander

Introduction

> The whaleman fortunately has left behind him one enduring monument. In his spare time he developed the only important indigenous folk art, except that of the Indians, we have ever had in America; the Art of Scrimshaw.[1]

Those words were written by Clifford W. Ashley in Chapter XI of the book The Yankee Whaler, published in 1926. Himself a whaler, he knew whereof he spoke. He owned several pieces of scrimshaw that have since proven to be quite valuable. Ashley stands out in studies of Americana in that he was the first person ever to write seriously about the obscure form of American art known as scrimshaw. Other writers had only mentioned it obliquely. Because of this, he is the single most quoted source on the subject.[2]

Scrimshaw, as an art form, had just recently risen a few notches above the state of obscurity. There are still millions of Americans who probably know nothing about it. Inextricably linked with the whaling industry for years, the scrimshaw industry has recently undergone a remarkable transition. When whaling ended in the United States, scrimshaw moved ashore and some people found out that there was a great deal of money to be made in the scrimshaw business. But with the passage of the Marine Mammals Protection Act of 1972 and an amendment to the Endangered Species Act in 1973, scrimshanders found themselves being tightly regulated by the Federal government. Displaying typical New England stubborness, a number of New Bedford scrimshaw artists and businessmen appealed directly to the House Committee on Merchant Marine

and Fisheries to ease restrictions against their trade.[3] The interaction between the U.S. Congress and New England scrimshanders has not ended.

This paper shall examine the United States' scrimshaw industry as it operates today. It shall review the history of scrimshaw as it relates to New England specifically, and will trace the transformation of the art form from an obscure folk art to a lucrative business. Finally, using interviews with a number of people both in law enforcement and in the scrimshaw business itself, it shall review the practical effects of the two Federal acts which directly impact upon U.S. scrimshanders.

A Brief History of the Yankee Whalers

> The developement and flowering of the art of scrimshaw parallels the developement of the American whaling industry; it was affected by every phase of it.[4]

Yankee whalers first got into the whaling business by emulating the American Indians; those early natives would launch a canoe from shore and spear the great beasts in fairly shallow water. The New Englanders improved on the design of the spear to fashion the harpoon. Their boats were also constructed differently but they shared the same hunting successes their immediate predecessors did. It was to be noted later, when referring to shore whaling, "from 1690 to 1760, not a single whaleman lost his life."[5]

Soon, watch towers were set up on the southern shore of the island of Nantucket to spot the whales as they came in close to shore. The Nantucketeers would then sally forth in their sloops, trailing one or two crude whaleboats behind them, to hunt the baleen whales known as Right whales.

It is generally acknowledged that a Nantucket man, Christopher "Kit" Hussey, was the first man to kill a sperm whale and thus change the face of American whaling forever.[6] His 70 foot sloop was blown out to sea by a storm, right into a pod of sperm whales. Each one of them was nearly as big as his vessel. Not wishing to return to port empty handed, he harpooned one and after a great battle, succeeded in landing the monster. The year was 1712. Within weeks, Hussey sailed deeper into the Atlantic, looking for more sperm whales. Other Nantucket whalemen soon followed closely

in his wake.

Because of the sperm whale, what had been a minor enterprise along the New England coast now became big business. Going south and east, the Nantucketeers found sperm whales in abundance. By 1740 some 50 sloops of 40 to 50 tons were bringing in almost 5,000 barrels of oil a year, valued at $25,000. By 1748, there were 60 boats, doing a business of $96,000 and in 1774, the Nantucket fleet numbered 150, with an annual income of $500,000.

The sperm whale was a profitable beast to hunt. It is a large whale that renders a great quantity of oil; a 50 foot whale produces from eleven to twelve long tons of high quality sperm whale oil. Such oil was used to light lamps in Early America, with a secondary use as a lubricant. But the sperm whale brought other gifts to its human predators as well: spermacetti and ambergris.

Spermacetti is a waxy substance found in a great cavity within the skull of the sperm whale. Some early whalemen, with little background in biology, surmised that the white liquid was actually the whale's sperm (hence its name) and that God had created this strange animal to perplex man. He did a pretty good job because marine scientests are still not sure what use a sperm whale makes of its spermacetti. They speculate that it is somehow linked with the whale's echo-location faculty which it uses when diving to great depths of the ocean. Early New Englanders used the waxy substance to make candles which were virtually smokeless.

Ambergris is produced inside the sperm whales' intestines. It usually surrounds a hard object like the undigestable beak of the giant squid and is postulated to be the sperm whale's method of protecting its digestive tract until such time as the lump is passed from the body. Ambergris can be found floating on the ocean's surface and it was not until the middle of the eighteenth century that man discovered it came from inside a sperm whale. It has a pleasant, earthy odor in its own right but was found to have odor-fixative properties that was of great value to European perfumers. The hard working Americans had little use for this product themselves but didn't mind making a handsome profit from ambergris by selling it in London.

The sperm whale proved to be such a valuable asset that a number of New England cities began to conduct a steady commerce in whale products. Nantucket was the first city to realize its potential but was soon eclipsed by the rise of the city of New Bedford. By 1846, there were 729 American whaling vessels on the high seas, reaping huge profits for their owners. The ship Lagoda, sailing out of New Bedford, earned $625,000 in twelve years - it cost $500 to build. The whaling industry spread to Provincetown and Dartmouth, Massachussets, Bristol and Narraganset, Rhode Island, Mystic, Stonington, and New London, Connecticut, and Sag Harbor, New York. In every one of those cities, the "whaling mansions" sitting on the high hills bear testimony to the fortunes that were made in the whaling industry.

Whaling was not a romantic industry. Not all sailors

were like the young Herman Melville who would content himself with close observation and philosophical thought. Few of them were well educated. Because of the reputation whalers had of being dirty, slow-moving ships, the best mariners would often go elsewhere for employment. To make due with the talent they had, whaling masters were often lax in discipline and did not meddle into the sailors' affairs. The New England merchant ship sailors could be heard to say, "Better dead than shipped aboard a blubber hunter for a four year cruise."

Whaling ships were huge and ponderous, built to carry caskets full of oil, and large enough to "strip the huge whales of their hides." They were, in all practicality, the first floating processing plants recorded in America. Four year cruises were not uncommon since the whaling ships sailed not only the Atlantic, but would cut around the capes of both southern continents to hunt whales in the Indian Ocean and the Pacific. The Azores and Lahaina, Maui, as well as San Francisco and Anchorage, Alaska became secondary ports of call, used to off-load oil caskets for a profit before going to sea again to hunt for sperm whales.

The sperm whale was a formidable opponent, perhaps because toothed whales were familiar with doing battle to survive. Victor Scheffer describes its eating habits thusly:

> Down, down, on a long slanting course through the zones of green and purple twilight to utter blackness below. Luminescent fishes and strange blobby creatures brush past his undulating tail as he goes steadily deeper. The pressure is now one hundred tons to the square foot; the water is deathly cold and quiet. At a depth of three thousand feet he levels off and begins to search for prey. The sonar device in his

> great dome is operating at full peak. Within a quarter-hour he reads an attractive series of echoes and he turns quickly to the left, then to the right. Suddenly he smashes into a vague, rubbery, pulsating wall. The acoustic signal indicates the center of the Thing. He swings open the gatelike lower jaw with its sixty teeth, seizes the prey, clamps it securely in his mouth, and shoots for the surface. He has found a half-grown giant squid, thirty feet long, three hundred pounds in weight. The squid writhes in torment and tries to tear at its captor, but its sucking tentacles slide from the smooth, rushing body. When its parrot beak touches the head of the whale it snaps shut and cuts a clean chunk of black skin and white fibrous material. The whale shakes its prey in irritation.
>
> Suddenly the surrounding water fills with light and the bull lies puffing in the sunshine. He crushes the squid's central spark of life; its grey tentacles twist and roll obscenely like dismembered snakes. The bull begins to draw in great gasping drafts, expelling each breath in a pyramid of vapor which holds not only stale air and moisture but also a special kind of foam or mucus. Patches of this dry, like meringue, on the top of his head before he is done with breathing - fifty breaths or more. Now at ease, the bull turns to the dead beast and leisurely chomps it into bite-size pieces, each the size of a football, and thrusts them mechanically into his gullet with muscular tongue.[7]

So it was that the New England whalemen found themselves pitted against a fearsome quarry. Young, green hands, shipping out for the first time were often asked, "Do you know what you're here for?" If they didn't know the answer, an old salt would tell them - "A dead whale or a stove boat." It is a matter of record that sperm whales sank whaling boats, and in some instances, whole ships. Herman Melville in Moby Dick painted a vivid picture of such a scene:

> ..... the whale wheeled around to present his blank forehead at bay; but in that evolution, catching sight of the nearing black hull of the ship; seemingly seeing in it the source of his persecutions;

> bethinking it - it may be - a larger and nobler foe, of a sudden, he bore down on its advancing prow, smiting his jaws amid fiery showers of foam.
>
> ..... From the ship's bows, nearly all the seamen now hung inactive; ..... all their enchanted eyes intent upon the whale, which from side to side strangely vibrating his predestining head, sent a broad band of overspreading semicircular foam before him as he rushed. Retribution, swift vengeance, eternal malice were his whole aspect, and spite of all that mortal man could do, the solid white buttress of his forehead smote the ship's starboard bow, till men and timbers reeled. Some fell flat upon their faces. Like dislodged trucks, the heads of the harpooners aloft shook on their bull-like necks. Through the breach, they heard the waters pour, as mountain torrents down a flume.
>
> ..... For an istant, the tranced boat's crew stood still, then turned. "The ship? Great God, where is the ship?" Soon they through dim, bewildered mediums saw her sidelong fading phantom..... And now, concentric circles seized the lone boat itself, and all its crew, and each floating oar, and every lance pole, and spinning, animate and inanimate, all round and round in one vortex, carried the smallest chip of the Pequod out of sight.[8]

Fictional whales smash ships to smithereens. But Bibical whales will swallow a man whole and spit him back onto land a few weeks later. In point of fact, the sperm whale is the only whale large enough in the gullet to swallow a man in one piece. The story of Jonah was often in the backs of the minds of even the most experienced whalemen. Probably with good reason - such a fate befell one of their company in 1891:

> The Star of the East was in the vicinity of the Falkland Islands and the lookout spotted a large Sperm Whale three miles away. Two boats were launched and in a short time one of the harpooners was able to harpoon the fish. The second boat attacked the whale but was upset by the lash of its tail and the men thrown into the sea, one man being drowned, and another, James Bartley, having disappeared, could not be found. The whale was killed and in a few hours was lying by the ship's side and the crew were busy with axes and

> spades removing the blubber. They worked all day and part of the night. Next morning they attached some tackle to the stomach which was hoisted on deck. The sailors were startled by something in it which gave spasmodic signs of life, and inside was found the missing sailor doubled up and unconcious. He was laid on deck and treated to a bath of seawater which soon revived him..... He remained two weeks a raving lunatic..... At the end of the third week he had entirely recovered and returned to full duties.[9]

To doubt the courage of anyone who would pit himself against such a formidable foe is pure folly. Whalemen have been likened to St. George doing battle with the dragon. To commemorate these acts of courage whalers would often pull the whales' teeth and inscribe them with pictures of their daring deeds. Thus were the raw materials that were used in scrimshaw brought aboard ship. Again, Melville tells how it was done:

I was wondering when scrimshaw will be mentioned in your paper

> Let us now with whatever levers and steam engines we have at hand cant over the sperm whale's head, that it may lay bottom up.....
>
> ..... look at this portentous lower jaw, which seems like the long narrow lid of an immense snuff box with the hinge at one end instead of the side. If you pry it up, so as to get it overhead, and expose its rows of teeth, it seems a terrific portcullis;....
>
> ..... In most cases this lower jaw - being easily unhinged by a practiced artist - is disengaged and hoisted on deck for the purpose of extracting the ivory teeth, and furnishing a supply of that hard, white whalebone with which the fishermen fashion all sorts of curious articles, including canes, umbrella stocks, and handles to riding whips.
>
> ..... and when the proper time comes, Queequeg, Draggo, and Yastego, being all accomplished dentists, are set to drawing teeth. With a keen cutting spade, Queequeg lances the gums, and a tackle being rigged from aloft, they drag out these teeth..... There are generally forty-two teeth in all, in old whales, much worn down, but undecayed; nor filled after our artificial fashion.[10]

The Birth of Scrimshaw

Scrimshaw was intricately linked to the sperm whale industry. Speaking of the New England whalers, one author wrote, "These ships were the cradle of scrimshaw; carving and engraving on sperm whales' teeth and other substances - the pastime of lonely and often dispirited seamen far from home."[11] Hunting whales was not a full-time occupation. It might take weeks, even months, before a pod of whales was spotted from the crows nest. There were long periods of time between the calls of "thar she blows!" Because of this, sailors had a lot of spare time on ~~his~~ their hands. And,"it is well known that whaling captains encouraged their crew to employ their spare time on scrimshaw, no doubt reflecting that Satan would find work for idle hands."[12]

The second mate would take charge of whales' teeth brought aboard and dole them out amongst the crew. He kept careful records of how much whalebone was given to each crewmember. The officers usually got the choicest lots. It was long suspected that the officers made the best scrimshanders because ~~they~~ had been to sea longer than the young and inexperienced deck hands. They also had better tools to work with.

A whale's tooth is rough faced with many ridges in it and needs to be smoothed down before engraving. To do this, sailors would use a piece of sharkskin, if they had nothing else, or a small piece of sandpaper they may have cajoled from the ship's carpenter. The cooper hay have let them use his saws to make various cuts in whalebone. But the single most

important tool in the scrimshander's trade was his jacknife. Whether he used it to carve small figures or to scratch lines into a smooth whale's tooth, the sailor would often spend hours employing his knife fashioning gifts for his friends and loved ones ashore. For engraving, he would use India ink, or in some cases, lamp soot, to bring out the lines in the tooth. A carver might make pie crimpers, known as jagging wheels, butter knives, rings, doorstops, rolling pins, or cribbage boards.

Evidently, some early writers who had dabbled in scrimshaw suggested that the American whalemen learnd their whalecraft from the Eskimos. Clifford Ashley skoffed at that idea. He wrote,

> Several writers on the subject have imagined that scrimshaw had its inspirations in the walrus tusk carvings of the Eskimo; but the work of the eastern Eskimo is very crude and the Arctic had never been penetrated by a whaler until 1835, so that the really excellent work of the northwestern Eskimo was unknown to the whaleman at a time when the Art of Scrimshaw had reached full flower.[13]

Whatever its origins, it is Yankee scrimshaw that receives most attention today.

The logs of the early whaling ships have shown that on some vessels, every hand aboard, from the Captain on down, worked on scrimshaw projects. It was even reported to some owners that scrimshaw was so popular a pastime, sailors would often spot whales on the horizon and refuse to report them. They did not wish to be interrupted from their scrimming. Some ships made it illegal to bring scrimshaw work on the main deck and restricted its location to the focsle.

The subject matter most sailors depicted on their whales' teeth was the subject they knew best - the sea. And most of them dealt with the whale hunt.

> ..... a whaleman-scrimshander picked the ultimate disaster befalling a voyage, the day when the hunter became the hunted and the whale won. For the effete landlubbers with their fancy libraries and drawing rooms overlooking the New England coast, this scrimshaw portrayed what whaling was really like! This would teach them of the back-breaking agony of pulling the oar, the wearisome days squinting from the masthead or pacing the decks, waiting, always waiting; the final and totally unjust reward under the flukes or within the jaws of the monstrous sperm whale.[14]

> The tooth of a sperm whale taken in close-up combat, fragile man against mightly and massive animal, was regarded as a trophy to be carried home in triumph, kin to the ear of the bull of the matador..... Even unadorned, sperm whales' teeth were exciting souvenirs. Imagine the affect if the tooth were decorated with a dramatic whaling scene![15]

Early scrimshaw was not made to be sold. As mentioned above, the whaleman produced works which were presented as gifts. A particularly good artist might be called upon to part with some of his work at the request of a shipmate who had promised to make a memento of his cruise but had never gotten around to finishing his own project. A plug of tobacco was the usual price. If he didn't have that, a sailor would often offer to mend clothes or do the artist's washing. Beyond that, the only recognition a truly good scrimshaw artist received in the Golden Age of Scrimshaw (1820-1865) was to win a cash prize at the New Bedford scrimshaw exhibitions - even this was a fleeting wisp of glory. The history of truly great American artists does not include the names of her scrimshanders.

From Obscure Folk-art to Lucrative Business

Whaling ended in the United States in the early 1900's when it was discovered that petroleum products could replace whale oil and getting it was much easier. The practice of scrimshaw may have ended when its parent industry died, but it survived.

Original, or "old" scrimshaw - work done before 1924 - was not a commodity that moved on commercial markets. In fact, a lot of it was junk, some of it pornographic junk, and was thrown away upon introduction into more civilized surroundings. The engravings and carvings had little financial value at the time they were made. A search of old New England publications showed that no mention was ever made of a piece of scrimshaw coming up for sale.

Whales' teeth on the other hand, did have a certain value - they were used for trade in the South Pacific.

> Crewmen not only traded their teeth for provisions, but also for souvenirs that would bring a higher price in New England. The top prize: a shrunken head from the South Seas. According to one historical account, a grisly whaling captain asked a Maori chieftain to bring his slaves aboard ship so the officers would check their tatoos and select the most desirable specimens. A week later, the natives returned to the ship with the newly shrunken heads to trade for a supply of whales' teeth.[16]

But even the shrunken head business was a short-lived enterprize, and today, has mercifully passed into oblivion.

As mentioned before, an errant sailor wishing to obtain a good piece of scrimshaw to present as a gift may have offered his tobacco in trade for its procurement. The trading worked the other way too - if one was hard put for

tobacco, he may have offered several prized teeth to get it. But the largest amount of scrimshaw traded was in exchange for that age-old evil: drink.

> I have known the labors of a six month cruise to be disposed of for a few dollars, and the proceedings spent in drink in less hours than the months required to make the article sacrificed.17

So it was that original scrimshaw was not held in great esteem by the American public at large. There was a long time when its importance faded. Some shops in New England may have sold scrimshaw as curios, city but it did not generate much income or enthusiasm. In Nantucket, one could buy a bucket of sperm whales' teeth for about five dollars, as little as 20 years ago (compared with today's price of $40.00 a pound, wholesale).

The event that eventually raised scrimshaw from its depths of obscurity was the election of John F. Kennedy as President of the United States. His importance to the art cannot be underestimated. It was he who popularized the craft more than any one else.

Born on Cape Cod, Kennedy grew up in the portion of New England which still sold scrimshaw, so he was familiar with its history. But it was while he was in the Navy that Kennedy could first understand the significance of the whaler's motto, "A dead whale or a stove boat." His own boat, PT 109, was cut in two by a Japanese destroyer in the Solomon Islands. LT Kennedy helped his men ashore and sent for help in an unusual manner. He found a coconut shell and scratched a message into it with his knife. It read, "NAURU ISL NATIVE

KNOWS POSIT AND REEFS 11 ALIVE NEED SMALL BOAT KENNEDY."

Years later, when he was elected to the U.S. presidency, John Kennedy wrote his book, Profiles in Courage. An ex-whaler from Brooklyn was so impressed with the tale that he scrimmed a three-piece ensemble in whales' teeth and presented them to the President. The first piece was a large sperm whale's tooth depicting the classical scene of a sperm whale smashing a whaling boat to kindling, the second, a thin slice of tooth, showing the Japanese destroyer just moments before its collision with PT 109, and the third was a depiction of the coconut shell upon which Kennedy had produced his own "scrimshaw."

President Kennedy's wife and other members of his family presented him with whales' teeth for birthday presents and to celebrate other occasions. He soon had a collection of scrimshawed whales' teeth displayed prominently on his desk in the White House. He commissioned scrimshaw work to be done, keeping some of it for his own collection, and presented pieces of the art work to heads of state; notably, Harold Macmillan, then Prime Minister of Britain, and Nikita Krushchev, Premier of the USSR. Krushchev replied in kind with a sail-and-steam, bark-rigged whaling vessel, made from walrus ivory and whalebone. Antiques magazine published a picture of the gift and accompanied it with an article entitled, "Scrimshaw in the White House," in its December, 1961 issue. Antiques had already published an article in August, 1961, entitled, "Scrimshaw: One Part Whalebone, Two Parts Nostalgia," in which the author stated, "Perhaps few collectibles better

illustrate Yankee ingenuity than the fascinating objects known as scrimshaw - a folk art believed to be indigenous to America."[18] With such a prestigious magazine giving so much attention to scrimshaw it was not long before the American public caught on.

> And, inevitably, for this is the custom of mankind, lesser men walked in the footsteps of the greater man, and scrimshaw became greatly desired.[19]

The price of scrimshaw doubled, then trebled, and is still going up today. Increased popularity is not the only reason that the scrimshaw industry has shown an ability to make a profit. There are several different aspects of the business, each one of which is profitable in its own right.

> The antique aspect is obvious. Original scrimshaw speaks for itself. It is all old, patently; and most of it is primitive and quaint; and as it is known to have been made by Yankee whalemen many years ago, it has been and is being acquired by collectors - museums and individuals - and by dealers to resell to collectors. The supply is diminishing; the demand is increasing; and the prices are mounting.[20]

> The teeth most prized and valued today are those etched with graphics of specific vessels, definitely indentified by their names, and sometimes, with dates and the names of the captains or the men who did the etching; and of identifiable places - ports, cities, and shores.[21]

To prove the point, a "Susan's tooth," etched by Frederick Myrick, and meeting all the above criteria, sold at a New York auction for $44,000 in October of 1982. Before that, the highest recorded price for a piece of scrimshaw was $29,000 in 1979.[22] The appreciation rate for original scrimshaw is considerable.

Few pieces of scrimshaw, sold purely as artwork, earn

truly great commissions. Bob Engnath, in the book, The Scrimshaw Connection, stated, "There are only a handful of artists today that can claim payment in the four figures for their work." Those that do are usually commissioned to do a specific piece for a buyer. Captain's Pride, a scrimshaw shop in Dartmouth, Massachussets, recently sold a pair of sperm whales' teeth for $3,000 apiece to a buyer from New York City, but the owner said that such sales are the exception in his business, not the rule.

By far, the most profitable aspect of the scrimshaw business today is in the "large quantity, low-end" sales to tourists. It is a multi-million dollar business. A businessman in Massachussets recently went to a scrimshander and asked to be taught scrimshaw. The artist complied. Taking what he had learned, the businessman purchased some ivory, hired a few young artists on his own, and began turning out small pieces of scrimshaw to be sold in New England tourist shops. In 1982, he cleared one million dollars in profits from his venture. Recalling this, the artist smiled wryly, "You know, you can teach a businessman how to do scrimshaw, but it is almost impossible to teach a scrimshander how to do business."

Today, there are spindle machines that can reproduce an original etching 24 times on separate pieces of ivory. These machines can be scaled up or down, or made to reproduce a completely reversed image from the original, as is often done for a pair of scrimshawed earrings. The machined pieces are usually hand finished by attendant artists so the dealer may

claim that all his work is "hand done."

A Newport, Rhode Island, dealer in scrimshaw stated, "It's the price, more than workmanship that determines how much scrimshaw I sell. Most people don't care how it looks, just so it's affordable." Scrimshaw, done on slices of whales' teeth or on cuttings small enough to be made into tie-tacks, earrings, or pendants, makes a good souvenir to take back to the Midwest. It is "authentic, New England craftmanship" to a great number of people.

On the far side of the law, there are large profits to be made in the illegal transport and sale of whale products. But that topic shall be discussed at greater length later. It is so profitable that one law enforcement agent quipped, "If I'd known that the stuff was going to get so expensive, I probably could have made myself comfortable by now." The remark was made with tongue in cheek--the agent is a respected, hard-working, public servant.

The last area of profit-making ventures to be discussed is that of scrimshaw reproductions. Sidney Winton, the president of Artek, Inc., a producer of polymer-ivory substitutes for whalebone, estimates that his company made about a quarter million dollars last year by selling plastic whales' teeth.[23] His artists reproduce authentic scrimshaw designs from original works held in various whaling museums. The company then pays royalties on each piece sold. They call this their "Save the Whale Collection." Artek also sells a line of blank whales' teeth and tooth slices (made of polymer)

to be used for future scrimshaw projects. Every one of Artek's products is clearly stamped with the company's logo and an easily seen statement that the product is man-made.

Not so scrupulous is a company out of England by the name of Juratone. Teeth manufactured by Juratone have been known to be sold as original scrimshaw in the United States. This is not to say that the parent company condones the practice--it may be that the American sales representatives are the guilty parties. However, those in the scrimshaw business wish that Juratone would make more of an effort to inform the public that its products are man-made. This response is something of a compliment to Juratone; because the teeth are so well done--it is hard to tell the difference.

A scrimshaw dealer in Newport, Rhode Island, appeared before the television cameras in 1981 to prove that a competitor down the street was actually selling plastic products and calling it authentic scrimshaw. He set a piece on fire and it melted. Later he was sued for defamation of character, but the case was settled out of court. Scrimshanders are very protective of their craft.

Save the Whale, and the Conservation Acts of the 1970's

Larry Vienneau is a Nantucket scrimshander. He has spent the last 4 summers practicing his craft during the summer months in his shop on Nantucket Island.

> Considering that no whaling has been practiced in Nantucket for over one hundred years and that most people in this country have become enlightened about protecting endangered species, Larry was taken aback when asked the following question. A little old lady had been watching him work for quite a while. She asked him several questions about what he was doing. Finally she said, with some obvious awe, "Did you harpoon the whale yourself?"[24]

U.S. whalers took their last whale in 1904. That was also the last year that sperm whales' teeth were brought into the country from U.S. vessels. As was mentioned before, there was no great demand for whale ivory until the 1960's. Then, an interest in scrimshaw produced somewhat of an import business in whales' teeth. Most of them came from the Azores, South America, or Japan. Scrimshanders had a ready supply of whales' teeth and although the prices for finished scrimshaw had gone up, raw materials were reasonably priced.

That situation has changed considerably. During the late 1960's, the "Save the Whale" campaign was born. It was sparked by an increasing conscientiousness in young Americans. They were not content with the fact that the United States did not hunt whales -- they wanted the U.S. government to use its influence to stop other nations from killing the great beasts.

The demise of the whales in the ocean was not a new concept. Herman Melville, in Moby Dick, wrote,

> Owing to the almost omniscient lookouts at the mast-heads of the whale-ships now penetrating even through Behring's straits, and into the remotest secret drawers and lockers of the world; and the thousand harpoons and lances darting along all the continental coasts; the moot point is, whether Levithian can long endure so wide a chase, and so remorseless a havoc; whether he must not at last be exterminated from the waters.[25]

The sperm whale is still being hunted today for its remarkable oil. When added to any other lubricant it performs superbly, forming a bond when applied to metal. It does not break down under heat. The closest thing that matches it is the oil from the Jojoba Nut, but the cost of harvesting them has not reached the economies of scale that one large sperm whale carcas yields.

In 1970, CRM Records of Del Mar, California issued an album called, Songs of the Humpback Whale, recorded by Roger and Katie Payne. Its immediate success was a mark of how far the "Save the Whale" conciousness had gone. Perhaps the beauty of the whales's songs led people to believe they had a moral obligation to save these intelligent and social sea mammals.

Another group of people, the marine scientests, took a more rational view of the problem. They looked at population dynamics. In the natural state, the rate of recruitment, or birth rate, will eventually compensate for the rate of natura mortality, and whale stocks will replenish themselves. But man's harvest of whales reaches un-natural limits. To cover up for his greed, man invented the euphemistic catch-phrase "maximum sustainable yield", assigning arbitrary numbers of whales that can be killed without totally decimating the species.

The problem is that no-one knows enough about whales to make such a decision. But whaling goes on.

> In the past man exterminated his fellow creatures largely through ignorance..... But if the great whales of the Antarctic disappear they will surely be the first victims of man's sheer greed and rapacity, wiped out by him in the full knowledge of what was happening, with all the results of modern scientific research on the table and the remedies at hand, waiting only for a few signatures.[26]

For some species, the signatures may have come too late. There were distinct eras of whaling that each served to strip certain whales from the oceans. During the days of sailing whalers, the right whale and bowhead whale suffered. The blue whale and the humpback - and possibly the finback and sei - dwindled at the hands of steam-powered whalers. And today, sperm whales are being hunted even though man has reduced their numbers by 350,000 in the last 12 years.[27]

"Save the Whale" enthusiasts looked upon the birth of the International Whaling Commission (IWC) in early 1960 as a god-send. Perhaps now the signatures would mean that the remedy was at hand - perhaps the senseless killing of whales could be stopped. But the IWC had no enforcement measures at its disposal, and two countries in particular, Japan and the USSR, openly exceeded the catch quotas set by the scientific community. The United States, a charter member of the organization, was often derided for its participation because it did not practice whaling; when it sought to introduce a moratorium on whaling altogether, it was laughed out of the hall.

The height of the "Save the Whale" movement occured when several chapters throughout the nation tried to mount a campaign against Japanese imports if the Japanese did not stop killing whales. A Rhode Island scrimshander once remarked, "I got really mad one day when I saw a "Save the Whale" sticker mounted on a Toyota. If you want to save the whale, buy an American car and quit supporting those whale killers."

Perhaps this is a good place to present the scrimshanders' now historical view of the "Save the Whale" movement. Leslie Linsley said it best:

> All the scrimshanders who I have talked to and perhaps all scrimshanders are concerned with saving the whale as an endangered species. The uninformed person is often horrified to see a scrimshander working on a whale's tooth, convinced that the crafter is promoting the killing of whales. This could not be further from the truth. The work that is being done now is significant. In the next several years, all scrimshaw work done on whale ivory and whalebone will be the last scrimshaw pieces produced in the United States on this material. No one knows how much of a supply is left, but the scrimshander is aware with each piece that is made, that it is one of the last pieces of scrimshaw done in this country. The scrimshander is scrimshawing with great care, knowing the precious value of the whale's tooth being worked. Scrimshaw as part of our American heritage will someday soon no longer be done on ivory.[28]

Ruth Edwards, a scrimshander from Westport, Massachussets, stated that when her supply of whales' ivory ran out she would not replenish it. She has proposed that soup bones are an acceptable medium for future scrimshaw projects.

The ban against Japanese imports mentioned earlier did not work. But the momentum that was generated in that endeavor did not fail its proponents completely. On October 21, 1972,

the U.S. Congress passed the "Marine Mammals Protection Act of 1972." The Act declared a moratorium on the taking and importing of any marine mammals or marine mammal products. This meant that whales' teeth could no longer be imported. But the Act specifically exempted from its prohibitions any marine mammals or their products lawfully taken before the effective date of the Act.

It should be mentioned here that some scrimshanders caught wind of the hearings on this Act and spread the word to their friends by grapevine of the law's impact on their trade. Many of them stock-piled whales' teeth in early 1972, before it became illegal to do so. At this point, there was not much change in the scrimshaw business other than an expected unavailability of raw materials in the future.

The Federal Act that really upset scrimshanders was the Endangered Species Act of 1973, passed on December 28, 1973. This Act made it unlawful to import, export, ship in interstate commerce, or sell or offer to sell in interstate commerce, any protected species or part. All the large whales were listed as endangered species.

Before the Endangered Species Act, it was common practice for scrimshanders to pack up their latest work and go on the road, appearing at craft fairs across the nation. They sold most of their scrimshaw at these fairs. It was also a common practice for an artist who lived in New Bedford, Massachussets, for instance, to sell his work to shops located in Newport, Rhode Island, Mystic, Connecticut, or New York City. The Endangered Species Act, as originally worded, would have

made all such "interstate commerce" unlawful.

The New England scrimshanders did not take this law lying down. A group of them lobbied strongly in their own defense. On January 17, 1975, Senator Edward Kennedy and Senator Edward R. Brooke, both from Massachussets, introduced S.229, the "Scrimshaw Art Preservation Act," to the Senate Commerce Committee. The committee amended the original bill before voting it out of committee.

> The amended version of S.229 sets forth more clearly the intent of Congress in enacting the legislation, that is, to preserve the native American art of scrimshaw, but not to promote or perpetuate the trade in products of endangered species. The committee views this legislation as providing a transition period during which scrimshanders may sustain themselves through the marketing of their finished products in interstate commerce, while at the same time adapt their work to other media which are legal for interstate sale.[29]

In support of the above legislation, a group of New England scrimshanders and businessmen hired a lawyer to represent them and sent a letter to the Honorable Leonor Sullivan, Chairman of the House Committee on Merchant Marine and Fisheries. Dated May 19, 1975, it stated in part: (after naming the group of concerned parties)

> These people are engaged in producing articles of jewelry and decorations from whalebone and whale teeth using the ancient craft of scrimshaw which is a part of the New Bedford whaling heritage.
>
> S.229 gives much needed relief to the New Bedford area scrimshanders from the Endangered Species Act. S.229 is a compromise bill that has been accepted by environmental groups who are concerned with protecting the Endangered Species Act and the remaining whale population. Scrimshanders in the New Bedford area are very satisfied with the compromise and hope that your committee will

> have hearings on this bill at the earliest possible time and pass the bill in its present form.
>
> Passage of this bill this year is especially important to New Bedford area scrimshanders. The craft of scrimshaw is representative of the whaling history of New Bedford. This heritage will be especially important in the coming bicentennial year and it is hoped that New Bedford scrimshaw will be shared with the rest of the country during this coming year.[30]

The Scrimshaw Art Preservation Act of 1975 never made it to the law books under that appellation. However, on July 12, 1976, the Endangered Species Act was amended by Public Law 94-359. This made it legal for the Secretary of Commerce to exempt "pre-act whale products", defined as Sperm whale oil and finished scrimshaw products if they were lawfully held within the United States on December 28, 1973, in the course of commercial activity.

The Secretary of Commerce delegated the implementation and enforcement of the law to the National Marine Fisheries Service (NMFS). On August 18, 1976, NMFS published interim regulations which established the procedure of obtaining an "exemption certificate" that would allow the bearer to export (not import), sell, offer to sell and deliver in interstate commerce, pre-act scrimshaw and sperm whale oil. Final regulations, almost identical to the interim ones, were made effective on June 1, 1977. No exemption certificates were to have any force or effect after the closing of a three year period beginning on the date of issuance of the exemption certificate. About 70 exemption certificates were applied for and issued throughout the 50 states.

on what basis were these exemptions given - wish you had said more on this

It would appear then that all interstate commerce in scrimshaw should have ended in 1980. This did not occur because the exemption certificates were extended for a three year period in 1979 and again in 1983.

In a letter to a Massachussets scrimshander, dated Febrary 24, 1983, Morris M. Pallozzi, the Chief of the Enforcement Division at NMFS, wrote:

> In 1976, Congress amended the ESA to allow persons who held legally obtained sperm whale oil and whalebone a three year period to dispose of their products. In 1979, Congress extended the disposal period for three additional years.
>
> On October 13, 1982, President Reagan signed into Law H.R. 6133, which authorizes the Secretary of Commerce to extend the currently held certificates for a maximum of three years, following review and revision of the Certificate of Exemption regulations. The Act calls for the implementation of these revisions by October 1, 1983. We are currently reviewing H.R. 6133 to determine how best it may be implemented. Meanwhile, CE holders may continue to sell their finished scrimshaw until January 1, 1984 or such time that they receive notification from us of the revised regulations - whichever occurs first. We also wish to point out that Section 9 (a) of the Endangered Species Act prohibits the import, export, and interstate or foreign shipment or sale of endangered species products, not the crafting of such products, or intrastate sales.
>
> If we can be of further assistance, please let us know.[31]

Donna Row, a special agent for the Enforcement Division at NMFS, confirmed the letter's content in an interview in April, 1983. She stated that her office had been tasked to do a study on scrimshaw products and submit recommendations regarding certificate extensions or expiration. The study had not been completed as of May, 1983.[32]

The Scrimshaw Industry Today

Perhaps the biggest complaint a modern-day scrimshander has against the federal Acts that regulate the business of scrimshaw is that they are not widely publicized. Most scrimshanders get the word second hand, from friends in the business, whenever a law is passed that further restricts its scope. There are at least 70 people in the nation who filed for certificates of exemption and whose names should be on file. Yet they are never asked for their opinion when matters of great import to their craft are being considered by federal agencies.

An example of the closed-mouth method of doing business occured in an auction in New York City in 1978. Several pieces of scrimshaw were brought to an auctioneer for sale. Instead, they were confiscated by a special agent of the Law Enforcement Division of NMFS. The items seized were not accompanied by certificates of exemption. The artists had never heard of certificates of exemption and wanted to know where they could get one. Thay were told that it was too late, the last ones had been distributed in 1977. One auctioneer in scrimshaw, Richard Bourne of Hyannis, Massachussets, argued that registering genuine scrimshaw was a good idea, but that certain valuable pieces may never show up until a few years in the future, and that legitimate collectors should legally be allowed to add such prizes to their collections. He stated that he would take his case to the Supreme Court to change the law so that commerce in antique scrimshaw is no longer restricted.[33]

The Endangered Species Act has also generated an unintended black market in whale's teeth which has acted to drive the price of legitimate scrimshaw even higher. Illegal whale products still enter the country. The special agent in charge of the Northeast region, NMFS, said that most whales' teeth today come in from the Azores. They recently dispatched an agent to the Azores to learn more of the operation. Sperm whales' teeth were considered garbage for many years and buried. Today, black marketeers will dig up the teeth and bring them into this country in hundred pound bags. Some of the ivory still has the dirt on it. They receive about $40.00 a pound for all the ivory they can successfully smuggle into the United States. In a recent case, a Lieutenant-Colonel in the U.S. Air Force was caught bringing in plane loads of illegal whale ivory from the Azores. With the help of his crew chief he would load his transport plane full of the stuff. The officer was court-martialed from the service and made to pay a stiff federal fine as well. Some of the ivory was traced to the city of Provincetown, Massachussets, where further arrests were made.

Illegal whales' products also come in from Canada to the north and Mexico to the south. Law enforcement officials are usually tipped off on some of the transactions by law-abiding people who happen to believe in saving endangered species. Acting on these tips, a special agent may arrange to make a buy and then arrest the seller. Local scrimshanders often help the federal agents. When someone tells one that he can get him all the whales' teeth he wants, a good

scrimshander becomes immediately suspicious. He figures that since he has to go through so much trouble living according to the laws, the crook deserves a little bit of trouble too.

Not all people in the scrimshaw business are so scrupulous. There is a well-known scoundrel on the east coast whose home office is in New Jersey, who regularly steps outside the law. The NMFS has run up against him on at least two occasions already. The first time occured when it was discovered that the man possessed some walrus tusks that did not have accompanying certificates of exemption. The tusks were confiscated and the person was fined. Later he was caught exchanging unfinished whales' teeth for scrimshawed products. The outcome of that case was never made public.

The same person is rumored to have paid off federal agents to look the other way when he brought in whale teeth from Canada. In a legitimate deal, he moved eight million dollars worth of elephant ivory into the state of California just a few months before that state banned any further import of that material. Now all scrimshanders must go to his warehouses for their supplies of elephant ivory.

Tracking down rumors and fitting facts to fiction proves to be interesting. There was a rumor in New England that the federal government held an auction of confiscated whale products to fill their coffers. The facts were somewhat different.

The Northeast Regional Office of the National Marine Fisheries Service collected about $150,000 worth of whale ivory last year which they loaded into a truck and drove to

Washington, D.C. There, they received a receipt for the contraband, and drove back home.

The national office of the NMFS still has the whale ivory in its possession. However, there was an auction of ivory jewelry and art, conducted by the U.S. Fish and Wildlife Service in New York City in September, 1982. These were articles confiscated by custom's agents being brought into the United States from outside the country. But the Fish and Wildlife people went to great pains to point out that the only articles that went on sale at that particular auction were items that would have been legal in U.S. commerce if proper certification had accompanied them. There were no raw whale products in the sale.

This brings up another problem. What is to be the final disposition of that room full of whale ivory held in Washington, D.C.? When asked if anyone had ever thought of just grinding the stuff up and making fertilizer out of it, the answer was an emphatic no. What then? According to current regulations, NMFS has several options: they can donate the whale products to museums who are doing research with whale bone; they can donate it to non-profit organizations on a lease arrangement wherein the material technically belongs to the government; they can sell it; or they can destroy it.

One might ask, to whom would you sell whales' teeth? Scrimshanders would love to get their hands on it. But that would thwart the purpose of the conservation Act. On the other hand, the profits from such a sale could be used to finance the operating costs of the agency in their fight against

illegal trafficking in whale products. But that argument is a circular one - is it alright for the U.S. government to profit from illegal whale products and not U.S. scrimshanders? The actual solution to the problem has not been decided. The room full of whale ivory still awaits a final decision. Meanwhile, a local scrimshander estimated that a room full of whale ivory should be worth about two hundred million dollars on today's market.

The operating costs of the Law Enforcement Division of NMFS are quite considerable. Dealing with Marine Mammals' cases alone, the NMFS employs 10 to 15% of its time. There are 25 agents in the Northeast Region, who work from Maine to Virginia. Regions may borrow agents from one another if the case stretches across regional boundaries or if a new face is required to send underground to make a buy. In some cases, an agent may spend 4 months exclusively dedicated to a whaling products case. When asked about the track records of their agents, NMFS stated that no-one had been caught accepting bribes from anyone, be he an east-coast scoundrel or someone else.

There is one other rumor alive on the eastcoast, which, if it isn't true in fact, is so believable that it ought to be. The rumor started with a little old lady at an east-coast craft fair who said, "Haven't you heard? Ted Kennedy has a warehouse full of whale's teeth up in Maryland somewhere." This rumor is completely unsubstantiated. The Senator's reputation for honesty is not hereby impugned. But the Kennedy involvement in scrimshaw is so well documented that

the runaway imagination could well believe in such a rumor. Again, this is only a rumor and is included here to show how colorful, or off-color, the world of modern scrimshaw really is. It is a dynamic art with its own folk-heroes. Surely the Kennedy name ranks among the very highest in the esteem of east-coast scrimshanders. It is in this context of he being "one of their own," that they joke about his stash.

Conclusion

The transformation of the scrimshaw industry from historical times to the present is full of tales of heroism, adventurism, innovation, and fortune-making in some cases. But the scrimshaw industry is still not certain of its future. Will certificates of exemption be extended yet again or will they finally expire? It is time that the U.S. government took a stand on the issue. One scrimshander suggested a way for the government to end it all, cleanly. Scrimshanders would calculate the fair market value they would receive for scrimshaw work produced on the quantities of whale ivory they currently hold in their inventory. They would then sell all their whale ivory to the U.S. government for that price, subject to the government's scrutiny concerning fair price. Some might object that such an act is ludicrous but it is no more ludicrous than paying farmers not to grow crops. And an additional benefit would accrue from the savings in 10 to 15% of the workload of the National Marine Fisheries Service. Otherwise, certificates of exemption should be extended indefinitely, until such time as legally held whale ivory no longer exists in the United States. In that instance, the words of Linsley would only be too prophetic, "Scrimshaw as part of our American heritage will some day soon no longer be done on ivory."

interesting paper

FOOTNOTES

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[2]Walter K. Earle, Scrimshaw, Folk Art of the Whaler, (Cold Spring Harbor, New York: Whaling Museum Society, Inc., 1957), p. II

[3]Martin A. Lipman, Letter of May 19, 1975, to Committee on Merchant Marine and Fisheries

[4]Norman E. Flayderman, Scrimshaw and Scrimshanders, (New Milford, Connecticut: N. Flayderman and Company, Inc., 1972), p. III

[5]A.B.C. Whipple, ed., The Whalers, (Alexandria, Virginia: Time-Life Books, 1979), p. 49

[6]Ibid.

[7]Victor B. Scheffer, The Year of the Whale, (New York: Charles Scribner's Sons, 1969), pp 21-22

[8]Herman Melville, Moby Dick, (New York: Books Inc., 1947), pp 476-477

[9]Scheffer, The Year of the Whale, p. 97

[10]Melville, Moby Dick, pp 320-321

[11]Charles R. Meyer, "Whaling and the Art of Scrimshaw," The Conservationist, (Nov/Dec 1976), p. 29

[12]Steven Banks, The Handicrafts of the Sailor, (New York: ARCO Publishing Company, Inc., 1974), p. 69

[13]Ashley, The Yankee Whaler, p. 113

[14]Charles R. Meyer, Whaling and the Art of Scrimshaw, (New York. Dacid McKay Company, Inc., 1976), pp 65-66

[15]Ibid., pp 82-83

[16]Timothy Branning, "Ivory Artistry of the Yankee Whaler," National Wildlife, (Feb/Mar 1981, V19/2), p. 17

[17]Ibid.

[18]Harrison Huster, "Scrimshaw. One Part Whalebone, Two Part Nostalgia," Antiques, (August, 1961), p. 122

[19]Meyer, Whaling and the Art of Scrimshaw, p. 211

[20]Earle, Scrimshaw, Folk Art of the Whaler, p. 7

[21]Ibid., p. 27

[22]"Reprise," New York Times (October 8, 1982), p. C24

[23]Interview with Sidney V. Winton, President, Artek Inc., Antrim, New Hampshire, 2 May 1983

[24]Lesley Linsley, Scrimshaw, A Traditional Folk Art, A Contemporary Craft, (New York: Hawthorn Books, Inc., 1976), pp 107-108

[25]Melville, Moby Dick, p. 399

[26]F.D. Ommanney, Lost Levithian, (New York: Dodd, Mead and Company, 1971), p. 265

[27]Meyer, Whaling and Art of Scrimshaw, p. 167

[28]Linsley, Scrimshaw, A Traditional Folk Art,..., p. 133

[29]Ibid., p. 135

[30]Lipman, Letter of May 19, 1975

[31]Morris M. Pallozzi, Letter F/Mxl. DMR, CER-09-80-29, (February 24, 1983)

[32]Interview with Donna Row, Special Agent, National Marine Fisheries Service, Washington D.C., 10 April 1983

[33]"Imports, Scrimshaw and Points of Law," New York Times, (January 8, 1978), p. II,26

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